

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

**GTE CORPORATION**, Transferor, and )  
**BELL ATLANTIC CORPORATION**, )  
For Consent to Transfer of Control )

CC Docket No. 98-184

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, hereby comments on the conditions proposed by Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE"), collectively, "Applicants,"<sup>1</sup> on their proposed merger. CompTel is a national industry association with approximately 350 members, including large nationwide suppliers and scores of smaller regional carriers. CompTel has a direct interest in this proceeding. CompTel's interest in the proposed merger is a matter of record in this proceeding.

CompTel previously opposed, and still opposes, the proposed merger because it would impede, and potentially eliminate, competition in the markets for local exchange, exchange access, advanced services, long distance, and Internet access services.<sup>2</sup> However, in the event the Commission determines that the merger should be approved, CompTel requests that the Commission require the merged Bell Atlantic/GTE entity ("merged entity" or "Bell Atlantic/GTE") to abide by specific conditions designed to promote competition. When

<sup>1</sup> Proposed Conditions for Bell Atlantic and GTE Merger, CC Docket No. 98-184 (filed Jan. 27, 2000) ("*Proposed Conditions*"); see *Public Notice*, DA 00-165 (rel. Jan. 31, 2000). CompTel also filed comments regarding Applicants' proposal to transfer the Internet backbone and related assets. See *Comments of the Competitive Telecommunications Association* (filed Feb. 15, 2000).

<sup>2</sup> CompTel initially filed an opposition to the proposed merger on November 23, 1998. See *Opposition of the Competitive Telecommunications Association, Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, CC Docket No. 98-184 (filed Nov. 23, 1998) (Attachment A); see also *Telecommunications Resellers Association v. FCC*, D.C. Cir. Docket No. 99-1441, in which CompTel intervened in support of TRA's appeal of the SBC/Ameritech merger.

considering each individual condition, the Commission should not lose sight of the overall purpose of the conditions: to increase competitive opportunities in order to offset the loss of potential competition resulting from the merger. While many of the proposed conditions mirror those approved in the *SBC/Ameritech Merger Order*,<sup>3</sup> CompTel would note that Bell Atlantic and GTE are different entities and, therefore, identical conditions may not be appropriate here.<sup>4</sup> Certainly, our members' experiences with the post-merger SBC/Ameritech, and with other ILECs, illustrate that the conditions adopted should be modified to promote competition and deter anti-competitive conduct.

**I. THE COMMISSION SHOULD CLARIFY THAT THE MERGED BELL ATLANTIC/GTE ENTITY AND ITS ADVANCED SERVICES SEPARATE AFFILIATE MUST COMPLY WITH ALL CHANGES IN LEGISLATION, RULES AND POLICIES THAT OCCUR AFTER JANUARY 27, 2000.**

CompTel requests that the Commission clarify that the merged entity and its separate Advanced Services affiliate would be required to comply with all regulations currently in effect as well as any legislative, rule or policy changes that might occur subsequent to the filing of the *Proposed Conditions*. In the *Proposed Conditions*, Applicants state that the separate advanced services affiliate would operate "in accordance with the structural, transactional, and non-discrimination requirements that would apply to a separate affiliate's relationships with a Bell Operating Company ("BOC") under 47 U.S.C. § 272(b), (c), (e), and (g), as interpreted by [the Commission] as of January 27, 2000 . . . ."<sup>5</sup> While that passage can be construed to mean only

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<sup>3</sup> *Ameritech Corp., Transferor and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, Memorandum Opinion and Order*, CC Docket No. 98-141, FCC 99-279 (rel. Oct. 8, 1999) ("*SBC/Ameritech Merger Order*").

<sup>4</sup> *See id.* at para. 361 (stating that the Commission's approval of the SBC/Ameritech merger subject to conditions "should not be considered as an indication that future applicants always will be able to rely on similar public interest commitments to offset potential public interest harms.").

<sup>5</sup> *Proposed Conditions* at 3, Condition 3.

that the Applicants believe the proposed conditions comply with the specified provisions as of the date they were proposed,<sup>6</sup> CompTel is concerned that the passage later could be construed by the Applicants as an implicit exemption from future legislation or new rules and policies. This latter construction is patently impermissible because it would transform the conditions into an advance petition for forbearance from legislation, rules or policies that are adopted subsequent to January 27, 2000. Forbearance is issue-specific and Applicants cannot request, and the Commission cannot grant, blanket forbearance from laws, rules or policies that are not yet in effect.<sup>7</sup>

An example of new developments that can and should apply to Bell Atlantic/GTE is the growing problem of anti-competitive bundling practices by incumbent LECs and their advanced services affiliates. That problem has been raised in various contexts, both before the Commission and individual state commissions.<sup>8</sup> As evidence of this problem, CompTel attaches the Declaration of Petra Frank-Witt, a New York consumer who sought to obtain DSL service from Bell Atlantic while obtaining voice service from a CompTel member company. Bell Atlantic informed Ms. Frank-Witt that if she wanted Bell Atlantic's DSL service she also would

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<sup>6</sup> CompTel disagrees that the proposed conditions conform to existing statutory obligations. *See e.g., infra* Part IV.

<sup>7</sup> Moreover, applying for forbearance in the context of proposed conditions is inconsistent with the Commission's current rules on applying for forbearance, which require any petition for forbearance to be a separate document from any other request to the Commission. *See* FR Doc 00-3430 (2/14/00).

<sup>8</sup> *See, e.g., Affidavit of Russell Morgan on Behalf of AT&T Communications of the Southwest, Inc.* (before the Public Utilities Commission of Texas); *Petition of AT&T Corp. for Expedited Clarification, or in the Alternative, for Reconsideration, Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147 (filed Feb. 9, 2000) (requesting that the Commission clarify that the *Line Sharing Order* does not preclude CLECs from combining xDSL with end-to-end combination of network elements); *AT&T Corp.'s Petition for Reconsideration and Clarification of the Third Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98 (filed Feb. 17, 2000) (stating that unbundled access to equipped loops in conjunction with the purchase of the UNE-platform is critical both to voice and advanced services competition).

have to purchase Bell Atlantic's voice service.<sup>9</sup> CompTel believes that these and similar ILEC practices are anti-competitive. If the Applicants are able to insulate themselves and their affiliates against all further developments regarding section 272, consumers such as Ms. Frank-Witt might be foreclosed from obtaining the benefits of such developments. Accordingly, the Commission must clarify that the merged entity and its Advanced Services separate affiliate would be subject to new legislation, rule and policy changes, Commission orders, or other legal and regulatory developments that may occur in the future.<sup>10</sup>

## **II. THE COMMISSION SHOULD CLARIFY THAT THE CONDITIONS DO NOT TERMINATE PRIVATE ENFORCEMENT ACTIONS.**

CompTel requests that the Commission clarify that the conditions, as approved, do not terminate private enforcement options that parties may have. In particular, the Commission should clarify that any person can bring a complaint against the merged entity, pursuant to section 208 of the Act, for a violation of any Commission rule, order, or the Act regardless whether the actions complained of violate the conditions.<sup>11</sup> The Commission also should clarify that the merged entity cannot defend against the complaint on the grounds that the merged entity's actions are consistent with the conditions. Instead, the merged entity must defend its conduct on the merits of the claims.<sup>12</sup> Lastly, the Commission should clarify that parties may file section 208 complaints against Bell Atlantic and GTE for violating the conditions.

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<sup>9</sup> Declaration of Petra Frank-Witt on behalf of the Competitive Telecommunications Association at para. 5 (Attachment B).

<sup>10</sup> Other types of anti-competitive activities that the Commission should consider addressing include situations such as SBC's Project Pronto, discussed at length in the comments filed in this proceeding by Advanced Telecom Group, Inc.

<sup>11</sup> *See Directel, Inc. v. American Telephone and Telegraph Company*, 11 FCC Rcd 7554 (1996) (stating that section 208 permits a formal complaint against a common carrier for a violation of the Act, rule or Commission order).

<sup>12</sup> *See SBC/Ameritech Merger Order* at para. 357 (stating that by complying with the conditions does not mean that SBC/Ameritech will satisfy its nondiscrimination obligations under the Act or the Commission's rules).

### **III. THE MERGED BELL ATLANTIC/GTE ENTITY SHOULD BE REQUIRED TO PROVIDE DSLAMS IN REMOTE TERMINALS AS UNBUNDLED NETWORK ELEMENTS.**

The Commission should require the merged entity to provide DSLAMs in remote terminals as unbundled network elements ("UNEs"). In the *UNE Remand Order*, the Commission recognized that "if a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops necessary to offer the same level of quality for advanced services, the incumbent LEC can effectively deny competitors entry into the packet switching market."<sup>13</sup> The Commission thus required that ILECs "provide requesting carriers with access to unbundled packet switching in situations in which the incumbent has placed its DSLAM in a remote terminal."<sup>14</sup> Consistent with that ruling, CompTel requests that the Commission require the merged entity to make DSLAMs available in remote terminals as UNEs. As Bell Atlantic and other ILECs aggressively push fiber further into the network through digital loop carrier and other arrangements, CLECs are impaired in competing with the ILECs unless they can obtain DSLAMs at remote concentrators as UNEs.

### **IV. EXCLUSIVE JOINT MARKETING AGREEMENTS ARE UNLAWFUL.**

CompTel requests that the Commission prevent Bell Atlantic/GTE and its separate Advanced Services affiliate from entering into exclusive joint marketing agreements. Instead, the Commission should require Bell Atlantic/GTE to make joint marketing arrangements available to any other requesting carrier. Section 272(g) of the Act contemplates that the BOC and its affiliate may enter into joint marketing arrangements so long as "other entities offering the same or similar service [are permitted] to market and [to] sell its telephone exchange

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<sup>13</sup> *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket No. 96-98, FCC 99-238, at para. 313 (rel. Nov. 5, 1999).

<sup>14</sup> *Id.*

services.”<sup>15</sup> Section 272(g) does not authorize or permit exclusive arrangements. In the *SBC/Ameritech Merger Order*, the Commission did not address the exclusivity provision of the proposed conditions.<sup>16</sup>

**V. THE COMMISSION SHOULD CLARIFY THAT BELL ATLANTIC/GTE MUST PROVIDE SERVICES, SUCH AS CONNECTING ITEMS LOCATED IN PHYSICAL COLLOCATION SPACE, ON A NONDISCRIMINATORY BASIS.**

CompTel requests that the Commission require Bell Atlantic/GTE to provide all collocation services, including, but not limited to: connection of advanced services equipment and ordering of interconnection facilities, and provisions contained in those conditions, on a nondiscriminatory basis.<sup>17</sup> Without this requirement, Bell Atlantic/GTE will be able to discriminate in favor of the separate affiliate.

The Commission also must prohibit Bell Atlantic/GTE from transferring any equipment to its advanced services affiliate or from providing new collocation space to the advanced services affiliate within the 180-day grace period. Additionally, the Commission should require Bell Atlantic/GTE to certify that there is collocation space available for at least two additional non-Bell Atlantic/GTE affiliates prior to permitting the affiliate to use the collocation space. Without such a requirement, Bell Atlantic/GTE could design future, and even existing, space to accommodate only the potential needs of itself and its affiliates.

**VI. THE MERGED ENTITY SHOULD MAKE AVAILABLE ANY IN-REGION INTERCONNECTION AGREEMENT.**

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<sup>15</sup> 47 U.S.C. § 272(g).

<sup>16</sup> See *SBC/Ameritech Merger Order* at paras. 460, 468.

<sup>17</sup> For example, when discussing services pertaining to *virtual* collocation, Applicants state that such services would be provided on a non-discriminatory basis. Applicants, however, inadvertently omit that non-discriminatory footnote when referring to ordering facilities for *physical* collocation. See, e.g., *Proposed Conditions* at 9, Condition 4.a.(7); *Proposed Conditions* at 11-12, Condition 4.f.

CompTel requests that the Commission require the merged entity to make available within its region to any requesting carrier any interconnection agreement or UNE that was voluntarily negotiated, arbitrated, or arrived at through other means, where technically feasible and consistent with state laws and regulations. CompTel recognizes that in the *SBC/Ameritech Merger Order* the Commission declined to expand the condition that SBC/Ameritech make available in any of its thirteen states any voluntarily negotiated interconnection agreement or UNE to include arbitrated agreements, stating that including arbitrated agreements “might interfere with the state arbitration process under sections 251 and 252 of the Communications Act.”<sup>18</sup> The Commission made this conclusion, however, without reference to any specific state commission supporting the Commission’s position.

We ask that the Commission reconsider its position in the *SBC/Ameritech Merger Order*, because this condition has not been effective. Instead, this condition provides a disincentive for SBC/Ameritech (or Bell Atlantic/GTE) to enter into voluntarily negotiated agreements. In order to provide the merged entity an incentive to enter into agreements, the Commission should require the merged entity to make available any interconnection agreement (and individual terms thereof) in its region to any CLEC. This obligation must apply unless there is a technical or legal reason preventing the requesting carrier from obtaining such provisions or agreement. States, of course, still retain the authority to establish interconnection rates, pursuant to section 252(g), that would apply to such agreements. The Commission also should require Applicants to establish state-specific MFN provisions prior to the close of this merger. Such provisions would ensure that each requesting carrier would be treated in the same manner.<sup>19</sup>

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<sup>18</sup> *SBC/Ameritech Merger Order* at para. 491.

<sup>19</sup> For example, such procedures could include a requirement that Bell Atlantic/GTE must file a response to a CLEC’s notification of what contracts are sought for a given state within a certain timeframe. If no response is provided, then the response is deemed waived.

**VII. BELL ATLANTIC/GTE MUST MAKE AVAILABLE ANY INTERCONNECTION AGREEMENT ENTERED INTO BETWEEN THE ADVANCED SERVICES AFFILIATE AND THE ILEC.**

CompTel requests that the Commission require Bell Atlantic/GTE to make available any agreement negotiated between Bell Atlantic/GTE and its separate affiliate. The Commission also must require that the separate affiliate purchase all non-exclusive services obtained from the Bell Atlantic/GTE through an approved interconnection agreement. Specifically, Applicants state that if the interconnection agreement negotiated between Bell Atlantic/GTE and the affiliate “has not become effective within 90 days of the filing date pursuant to 47 U.S.C. § 252(e)(4), the separate affiliate and the incumbent LEC, subject to applicable state law, will operate for jurisdictionally interstate services as if the agreement were in effect for those services.”<sup>20</sup>

Pursuant to section 252(e)(4), the agreement is deemed approved “if the State commission does not act to approve or reject the agreement within 90 days after submission by the parties of an agreement adopted by negotiation . . . .”<sup>21</sup> Any interested party can then opt-into such agreement pursuant to section 252(i) as if the agreement had been adopted by the State commission. Accordingly, CompTel requests that the Commission clarify that, pursuant to statute, Bell Atlantic/GTE must make such agreements available to requesting carriers. As currently drafted, it appears that Bell Atlantic/GTE are trying to limit the ability of carriers to opt-into only those agreements that are approved by the State commission. Such a result would be inconsistent with the statute. Moreover, requiring Bell Atlantic/GTE to make such agreements available essentially closes a loophole; Bell Atlantic/GTE will not be able to avoid the opt-in provisions by stringing the agreements along and never receiving approval. This requirement also provides an incentive to Bell Atlantic/GTE to make the agreements effective as soon as possible knowing that Bell Atlantic/GTE will have to allow opt-in agreements.

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<sup>20</sup> *Proposed Conditions* at 16, Condition 5.a.

Additionally, requiring Bell Atlantic/GTE to make all non-exclusive arrangements with the affiliate available in the form of an interconnection agreement ensures that CLECs will be able to obtain needed services, facilities, etc.

**VIII. THE COMMISSION SHOULD CLARIFY THAT “PUT INTO SERVICE” REFERS TO EQUIPMENT NOT ADVANCED SERVICES.**

Applicants propose that the ILEC and separate Advanced Services affiliate “may separately own facilities or network equipment used specifically to provide Advanced Services . . . provided that the separate Advanced Services affiliate . . . shall own . . . and operate all new Advanced Services Equipment (as defined below) used to provide Advanced Services (including equipment used to expand the capability or capacity of existing Advanced Services Equipment) *put into service* by Bell Atlantic/GTE not later than 30 days after the Merger Closing Date.”<sup>22</sup> CompTel requests that the Commission clarify that the phrase “put into service” refers to the Advanced Services equipment and not to the services themselves. This interpretation is necessary to prevent the ILEC from continuing to own equipment past thirty days, but to allow its affiliates to use the equipment without making such equipment available to non-affiliates.

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<sup>21</sup> 47 U.S.C. § 252(e)(4).

<sup>22</sup> *Proposed Conditions* at 5, Condition 3.d. (emphasis added).

**IX. CONCLUSION.**

For the foregoing reasons, CompTel respectfully requests that in the event the Commission adopts the proposed merger, that the Commission adopts the above modifications to the proposed merger conditions.

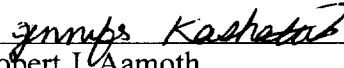
Respectfully submitted,

THE COMPETITIVE TELECOMMUNICATIONS  
ASSOCIATION

Carol Ann Bischoff  
Executive Vice President and  
General Counsel  
The Competitive  
Telecommunications Association  
1900 M Street, N.W. Suite 800  
Washington, D.C. 20036  
(202) 296-6650

March 1, 2000

By:

  
Robert J. Aamoth  
Jennifer M. Kashatus  
Kelley Drye & Warren LLP  
1200 19<sup>th</sup> Street, N.W.  
Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

# **ATTACHMENT A**

**OPPOSITION OF THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In the Matter of

Application of GTE Corporation, Transferor,  
And Bell Atlantic Corporation, Transferee, for  
Consent to Transfer of Control

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CC Docket No. 98-184

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**OPPOSITION OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

**THE COMPETITIVE  
TELECOMMUNICATIONS  
ASSOCIATION**

Genevieve Morelli  
Executive Vice President  
and General Counsel  
THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 296-6650

Robert J. Aamoth  
Melissa M. Smith  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

November 23, 1998

## SUMMARY

The Telecommunications Act of 1996 promised to deliver meaningful local exchange competition to the American public. To the detriment of consumers, local competition has not developed as envisioned. Instead, the ILECs have engaged in anti-competitive conduct and the Commission has approved several mergers reducing the number of major ILECs, thereby enabling the creation of fewer, larger and better-financed local exchange carriers with monopoly power. It is time now for the Commission to draw the line.

A combined Bell Atlantic/GTE would impede, and potentially eliminate, competition in the markets for local exchange, exchange access, long distance and Internet access services. First, the merger will deal a blow to the development of local competition. By proposing to merge, Applicants have effectively agreed not to compete against each other and, as a result, their merger will severely diminish local competition in their respective territories. With each successive ILEC merger, there are fewer potential competitors nationwide and, therefore, more harm to competition through the elimination of potential competitors. Applicants would have the Commission believe that neither would or could accomplish out-of-region expansion independently without the merger. This justification is simply not credible. CLECs have initiated significant efforts to enter the local market without nearly the resources of GTE or Bell Atlantic. In effect, Applicants are requesting that the Commission approve their decision not to compete against each other in exchange for vague expressions of intent to expand into out-of-region markets. The Commission should not accept this bargain.

Second, the merger raises obvious, serious issues of compliance with Section 271. GTE provides long distance services and an interLATA backbone Internet network throughout the country, including in Bell Atlantic's region. Bell Atlantic does not have Section 271 approval to

provide in-region, interLATA services in any state. Thus, as a matter of law, the Commission must reject the merger unless GTE completely exits the interLATA market in every in-region Bell Atlantic state or Bell Atlantic obtains the requisite Section 271 approvals. This conclusion applies fully to GTE's long distance operations in Virginia and Pennsylvania as "in-region States" within the meaning of Section 271.

Third, even assuming that Bell Atlantic receives Section 271 authority, the danger of cost-price squeeze here is significant because the merger of GTE and Bell Atlantic involves a huge concentration of access lines owned by the combined company. As long as Applicants continue to exercise market power over exchange access and to price access charges significantly above cost, they have the ability to subject any long distance competitor to a cost-price squeeze. In addition, the merger will endanger competition in the market for Internet services. The planned migration of Bell Atlantic's customer base onto GTE's Internet backbone will increase GTE's market power to a dangerous level. The merger will also increase the merged entity's total percentage of Internet users and traffic, thereby harming competition in the Internet access market.

Finally, denial of Applicants' request is required because of Bell Atlantic's lack of compliance with the conditions imposed in the *BA-NYNEX Order*. To date, Bell Atlantic has not fully complied with the conditions. Therefore, the Commission should immediately deny the instant application and defer any consideration of the merger until after Bell Atlantic has filed a compliance plan with the Commission subject to notice and comment. Once the Commission has found that Bell Atlantic has complied with the conditions previously imposed, then Applicants could reapply for authority to complete their merger.

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Consent to Transfer of Control	)	

**OPPOSITION OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully opposes the application of GTE Corporation ("GTE") and Bell Atlantic Corporation ("Bell Atlantic") requesting authority to transfer control.<sup>1</sup> As explained below, GTE and Bell Atlantic (collectively "Applicants") have failed to show that the proposed merger between the two companies is in the public interest.

**I. INTRODUCTION**

On October 2, 1998, Applicants filed joint applications requesting Commission approval of the transfer of control to Bell Atlantic of licenses and authorizations of GTE and affiliated companies.<sup>2</sup> After the proposed merger, GTE would become a wholly-owned subsidiary of Bell Atlantic. Contrary to the Applicants' claims, the combined entity would impede, and potentially eliminate, competition in the markets for local exchange, exchange

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<sup>1</sup> This opposition is filed in response to GTE Corporation and Bell Atlantic Corporation Seek FCC Consent for a Proposed Transfer of Control and Commission Seeks Comment on Proposed Protective Order Filed by GTE and Bell Atlantic, CC Docket No. 98-184, *Public Notice*, DA 98-2035 (rel. Oct. 8, 1998).

<sup>2</sup> Application for Transfer of Control, *In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, for Consent to Transfer of Control*, CC Docket No. 98-184 (filed Oct. 2, 1998) ("Application").

access, long distance and Internet access services. Thus, CompTel urges the Commission to deny this merger as contrary to the public interest.<sup>3</sup> It is time now for the Commission to “draw the line.” If the Commission approves this Bell Atlantic/GTE merger, as well as the SBC Communications, Inc. (“SBC”) and Ameritech Corp. (“Ameritech”) merger, this country would be well on its way to the merging of the remaining major incumbent local exchange carriers (“ILECs”) into one virtually nationwide, ubiquitous ILEC. CompTel submits that the public interest would not be served by the creation of a single nation-wide local exchange carrier.

Before the Commission can approve the transfer of control, it must find that the merger “would serve the public interest, convenience and necessity.”<sup>4</sup> It is well-established that GTE and Bell Atlantic, the Applicants, bear the burden of proving to the Commission that the merger is in the public interest.<sup>5</sup> The public interest standard is both flexible and broad, generally encompassing the pro-competitive and deregulatory goals of the Telecommunications Act of 1996 (“1996 Act”).<sup>6</sup> Specifically, among other issues, the Commission must consider whether a proposed transaction will “open[] all telecommunications markets to competition”<sup>7</sup> and “enhance[] access to advanced telecommunications and information services . . . in all

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<sup>3</sup> CompTel is a national industry association representing competitive telecommunications carriers and their suppliers. With over 250 members, including both large national and small regional carriers, CompTel has a direct interest in the outcome of this proceeding. Many of its members would be competing against the proposed Bell Atlantic/GTE entity.

<sup>4</sup> 47 U.S.C. §§ 214(a), 310(d).

<sup>5</sup> See *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Docket No. 97-211, Memorandum Opinion and Order, FCC 98-225, ¶¶ 8-14 (Sept. 14, 1998) (“*MCI-WorldCom Order*”); *Applications of NYNEX Corp., Transferor, and Bell Atlantic Corp., Transferee, For Consent to Transfer of Control of NYNEX Corp. and Its Subsidiaries*, 12 FCC Rcd 19985, 19994 (1997) (“*BA-NYNEX Order*”).

<sup>6</sup> See generally *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996)(subsequent history omitted) (“*1996 Act*”).

<sup>7</sup> *MCI-WorldCom Order* at ¶ 9.

regions of the Nation.”<sup>8</sup> Also, the Commission must consider “whether the merger will affect the quality of telecommunications services provided to consumers or will result in the provision of new or additional services to consumers.”<sup>9</sup> Under these standards, the Commission should reject the proposed merger.

## **II. A GTE/BELL ATLANTIC MERGER WILL HINDER COMPETITION IN THE LOCAL MARKET**

The 1996 Act sought to remove the barriers to local competition and encourage competitive entry through resale, the purchase of unbundled network elements (“UNEs”), and facilities-based entry. Unfortunately, local competition has not developed as envisioned by Congress. Instead, the Bell Operating Companies (“BOCs”) and GTE have fought successfully to retain monopoly control over the local exchange and exchange access markets. As demonstrated by the Commission’s five orders denying BOC Section 271 applications, meaningful local competition has not yet arrived.<sup>10</sup> Further, without even the incentive offered by Section 271, GTE is even further away than the BOCs from opening its local markets to competitive entry in compliance with the statute. In line with the ILECs’ anticompetitive behavior, the Eighth Circuit’s rulings regarding the provision of UNEs that already are combined have undermined the ability of competitive local exchange carriers (“CLECs”) to provide broad-based local exchange services, and have increased the cost and complexity of local entry. Also, the Commission’s prior merger approvals have reinforced the barriers to local competition by

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<sup>8</sup> *Applications of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, For Consent to Transfer Control*, 13 FCC Rcd 15236, ¶ 11 (1998).

<sup>9</sup> *MCI-WorldCom Order* at ¶ 9.

<sup>10</sup> *See, e.g., Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231, Memorandum Opinion and Order, FCC 98-17 (rel. Feb. 4, 1998).

allowing the ILECs to pool their resources and entrench their monopolies. Against this backdrop of court rulings unfavorable to CLECs and massive ILEC resistance to local competition, the accelerating ILEC concentration through mergers is causing further setbacks to local competition. If the Commission approves this merger, local competition will continue to suffer, and indeed, worsen.

**A. The merger will eliminate the potential for significant local competition within the Bell Atlantic/GTE region**

By proposing to merge, Bell Atlantic and GTE have effectively agreed not to compete against each other and, as a result, their merger will severely diminish local competition in their respective territories. Applicants claim, however, that “there is no basis for any conclusion that Bell Atlantic, on its own, would be an entrant at all [in GTE’s territories outside the Northeast] . . . [and] no colorable basis for suggesting that GTE might be an . . . entrant into Bell Atlantic service areas distant from GTE franchise areas.”<sup>11</sup> Therefore, they argue, the issue of potential significant competition is limited to specific areas in Pennsylvania and Virginia where the companies are near each other.

First, the Applicants’ claim that they would not compete against each other as local exchange carriers except for limited contiguous territories is implausible. The Applicants are two of the largest ILECs, clearly large and strong enough to expand nationwide. Given their expertise, resources and consumer bases, they and other large ILECs are among the most likely candidates to enter each other’s local market as competitors.<sup>12</sup> Further, the Applicants plainly

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<sup>11</sup> *Application*, Public Interest Statement at 25, n. 22.

<sup>12</sup> See *In the Matter of Application of SBC Communications, Inc. and Ameritech Corporation for Consent to Transfer of Control*, CC Docket No. 98-141, (“*SBC-Ameritech Application*”) Petition of AT&T to Deny Applications at 22-23, citing *BA-NYNEX Order* at ¶¶ 106-108 (filed Oct. 15, 1998).

have demonstrated a willingness and ability to enter each other's local markets. For example, in New York, GTE North, Inc. has indicated a desire to enter the local market.<sup>13</sup> Were the proposed merger rejected, therefore, it is likely that GTE would expand into the local exchange and other telecommunications markets in New York, as it has in several other states.<sup>14</sup>

There is even more reason to be concerned about the anti-competitive effect of the merger in two states (Pennsylvania and Virginia) where both companies already have a strong presence. Both GTE and Bell Atlantic have substantial brand name recognition, as well as the capability and incentive to compete against each other. Indeed, GTE has concluded local interconnection agreements in these two states.<sup>15</sup> Moreover, GTE previously requested certification to provide local service in the areas served by Bell Atlantic in Virginia, but withdrew the application the day before it filed the merger application.<sup>16</sup> This is a strong indication that GTE was ready and able to compete against Bell Atlantic without the merger.

CompTel submits that a Bell Atlantic/GTE merger poses an even greater threat to local competition than the Bell Atlantic/NYNEX merger. At that time, a little over a year ago, Bell Atlantic had set its sights on NYNEX, an incumbent not unlike GTE. In the *BA-NYNEX Order*, the Commission found that Bell Atlantic possesses unique advantages not possessed by other market participants.<sup>17</sup> These advantages include the fact that it provides local telecommunications services, as opposed to long distance, its extensive marketing in the relevant

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<sup>13</sup> *In the Matter of the Petition of Bell Atlantic Corporation for Approval of Agreement and Plan of Merger with GTE Corporation*, New York Public Service Commission, Case No. 98-C-1443 at 3, n.2 (filed Oct. 2, 1998) ("*NY Merger Petition*").

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Application*, Exhibit 4, Declaration of Jeffrey C. Kissell at ¶ 15.

<sup>16</sup> *Id.*, Declaration of Hubert R. Stallard at ¶ 4.

<sup>17</sup> *BA-NYNEX Order* at 20040.

area and a strong reputation in the market as a local telephone company.<sup>18</sup> In addition, the Commission agreed that an ILEC entering an out-of-region market brings particular experience to the interconnection and arbitration processes due to its knowledge of local telephone operations.<sup>19</sup> Thus, the Commission concluded that the merger of Bell Atlantic and NYNEX would eliminate a significant market participant. As a result, “the merger as proposed (without commitments) appear[ed] likely to increase the risk that a carrier may find it profitable to exercise unilateral market power in the relevant markets.”<sup>20</sup> Nonetheless, the Commission approved the Bell Atlantic/NYNEX merger with conditions (which, as shown below, have not been fully complied with).

This time, the elimination of a significantly larger segment of in-region local competition is too important a setback to ignore or attempt to condition – and the specter of other major ILEC mergers, such as SBC/Ameritech, magnifies this danger. With each successive ILEC merger, there are fewer potential competitors and, therefore, more harm to competition through the elimination of potential competitors. The Commission should consider what its actions would have been if, over a year ago, it had been presented with a Bell Atlantic/NYNEX/GTE merger and an SBC/Ameritech merger at the same time. CompTel suggests that the Commission would have denied the mergers to protect local competition as envisioned by Congress under the 1996 Act.

**B. The merger will make it more difficult to benchmark ILECs’ performance**

The merger of Bell Atlantic and GTE will make it extremely difficult for the

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 20040-20041.

<sup>20</sup> *Id.* at 20041.

Commission, state regulators, and the industry to properly benchmark the ILECs' performance. In the *BA-NYNEX Order*, the Commission discussed the importance of the existence of several ILECs as an important regulatory tool and warned that future mergers would be increasingly problematic "as the potential for coordinated behavior increases."<sup>21</sup> With major ILEC consolidation, in addition, there will be a likely reduction in "experimentation and diversity of viewpoints in the process of opening markets to competition."<sup>22</sup> And, an increase in cooperation among the remaining ILECs that "can effectively inhibit or delay the implementation of the 1996 Act and other pro-competitive initiatives."<sup>23</sup> Even Bell Atlantic has emphasized the importance of benchmarks: "Each BOC serves as a benchmark against which the Commission can measure the performance and behavior of the next; such comparisons were quite impossible before divestiture."<sup>24</sup>

Most recently, in the *SNET-SBC Order*, the Commission reiterated its concern "about the consolidation among large LECs as a general matter, and . . . [planned to] closely review mergers involving large LECs on a case-by-case basis."<sup>25</sup> In that case, the Commission concluded that the proposed merger between SBC and Southern New England Telecommunications Corporation ("SNET") was not likely to adversely affect the public interest in part because SBC and SNET were not comparable companies in terms of size. The

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<sup>21</sup> *Id.* at 20058-20063.

<sup>22</sup> *Id.* at 20060.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 20059, citing *Bell Atlantic, BellSouth, NYNEX and Southwestern Bell Corporation Motion to Vacate the MFJ*, Civil Action No. 82-0192 at 29 (July 6, 1994).

<sup>25</sup> *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Southern New England Telecommunications Corporation, Transferor, to SBC Communications, Inc., Transferee*, Memorandum Opinion and Order, CC Docket No. 98-25 at ¶ 21 (rel. Oct. 23, 1998) ("*SNET-SBC Order*").

Commission stated that "SNET is substantially smaller than the 'first tier' LECs – the BOCs and GTE – and has long been subject to different regulatory treatment."<sup>26</sup> Here, Bell Atlantic and GTE are just the sort of large ILECs that the Commission had in mind when it expressed its concern about mergers and their adverse impact on implementation and enforcement of the 1996 Act.

### III. OUT-OF-REGION ENTRY BY GTE/BELL ATLANTIC IS NOT A PLAUSIBLE JUSTIFICATION FOR THE MERGER

Applicants suggest that they must merge in order to have the ability to compete in the local markets of other ILECs.<sup>27</sup> This justification is not credible. Applicants' supposed plans include entering at least twenty-one markets in the regions of SBC, Ameritech and BellSouth.<sup>28</sup> They claim that "the separate companies alone could not succeed" in pursuing out-of-region entry.<sup>29</sup> Despite the fact that GTE, for example, has already established a separate corporate unit for planned entry into out-of-region territory and has already developed the expertise required for competitive entry, Applicants would like the Commission to believe that neither Bell Atlantic nor GTE would or could accomplish this sort of expansion independently, without the merger.<sup>30</sup>

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<sup>26</sup> *Id.*, citing *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6818-20 (1990) (large LECs, namely the BOCs and GTE, were required to move to price cap regulation whereas smaller LECs, such as SNET, were permitted to choose whether or not to move to price cap regulation); 47 U.S.C. § 251(f)(2) (Suspensions and Modifications for Rural Carriers – permitting smaller LECs, such as SNET, to petition for suspension or modification of the interconnection requirements imposed on incumbent LECs by the Telecommunications Act of 1996.)

<sup>27</sup> *Application*, Public Interest Statement at 6-8.

<sup>28</sup> *Id.* at 6-7.

<sup>29</sup> *Id.* at 6.

<sup>30</sup> *Id.* at 7.

Both Bell Atlantic and GTE separately have the ability to undertake significant out-of-region entry. CLECs have been able to initiate significant efforts to enter the local market without nearly the resources of GTE or Bell Atlantic. One such carrier, e.spire, has indicated to the Commission that CLECs such as itself, MFS, Brooks Fiber and TCG, have already initiated plans of competitive entry that are equivalent to the sort of entry contemplated by Applicants.<sup>31</sup> In effect, Applicants are requesting that the Commission approve their decision not to compete against each other (thereby hindering local competition) in exchange for their expressions of intent to expand into other out-of-region markets (which they could accomplish without the merger). The Commission should not accept this bargain. Applicants' claim of out-of-region entry is nothing but an effort to hide the extent to which competition will be eliminated in their own regions by puffing about the extent to which competition *may not be diminished* in other regions. In other words, Applicants offer a contrived attempt to disguise a merger that is plainly not in the public interest.

Out-of-region local competition may even be adversely affected by the proposed merger in light of the increased incentive for Bell Atlantic and GTE to frustrate and defeat the market-opening provisions of the 1996 Act. Simply put, when the 1996 Act was adopted, the BOCs had the prospect of revenues to be gained from out-of-region competitive entry to offset the potential loss of in-region monopoly local exchange revenues. Since that time, as the BOCs have merged with each other into larger, better-financed entities, the prospective gains from out-of-region entry continue to diminish while their incentive to preserve their in-region monopoly profits increases dramatically. With each successive merger, the largest ILECs are better able to

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<sup>31</sup> *SBC-Ameritech Application*, e.spire Comments at 12 (e.spire, for example, has built 32 state-of-the-art fiber optic networks in the past five years and plans to expand further in the near future.)

resist complying with the local market-opening provisions of the 1996 Act.

**IV. BEFORE THE MERGER COULD BE APPROVED, GTE MUST EITHER CEASE HANDLING INTERLATA TRAFFIC IN BELL ATLANTIC'S IN-REGION STATES OR BELL ATLANTIC MUST OBTAIN NECESSARY SECTION 271 APPROVALS**

In addition to providing local telephone service in twenty-eight states, GTE provides long distance services and an interLATA backbone Internet network through the country,<sup>32</sup> including in Bell Atlantic's region. As a result, the proposed merger of Bell Atlantic and GTE raises obvious, serious issues of compliance with Section 271, which prohibits the provision of in-region interLATA services by a BOC except upon approval of the FCC after showing full compliance with the market-opening requirements of the statute. Bell Atlantic does not have Section 271 approval to provide in-region interLATA services in any state. The Applicants' principal mention of Section 271 is in a footnote that states: "Bell Atlantic hopes to have needed Section 271 approvals by the time this merger closes. If that process is not complete, applicants will request any necessary transitional relief from the Commission."<sup>33</sup> That treatment of a serious issue is inadequate. As a matter of law, the FCC must reject the merger unless GTE exits the interLATA market in every in-region Bell Atlantic state or Bell Atlantic obtains the requisite Section 271 approvals.

Section 271 of the 1996 Act requires BOCs to obtain approval from the Commission before providing interLATA services originating within their "in-region" states.<sup>34</sup> For Bell Atlantic, Section 271 means that, until it obtains Commission approval, Bell Atlantic or an "affiliate" of Bell Atlantic may not provide interLATA services in a state in which Bell

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<sup>32</sup> *Application* at 3.

<sup>33</sup> *Id.* at n. 14.

<sup>34</sup> 47 U.S.C. § 271(a) and (b)(1).

Atlantic was authorized to provide wireline telephone exchange services pursuant to the AT&T Consent Decree, as in effect on the day before the enactment of the 1996 Act.<sup>35</sup> After the merger, GTE clearly would be an "affiliate" of Bell Atlantic,<sup>36</sup> and as such, it may not provide interLATA services in any of Bell Atlantic's in-region states until Bell Atlantic obtains the necessary Section 271 approvals. Therefore, in order to be in compliance with Section 271, GTE and its subsidiaries must exit the interLATA business in the entire Bell-Atlantic region if the merger is approved,<sup>37</sup> or alternatively, Bell Atlantic must obtain Section 271 authority for those states.

It bears emphasis that this conclusion applies fully to GTE's existing long distance operations in Virginia and Pennsylvania. Even though those operations might be in part outside Bell Atlantic's region, they nevertheless are being provided in two of Bell Atlantic's "in-region States" within the meaning of Section 271. Therefore, GTE must completely exit the interLATA business in Virginia and Pennsylvania, or Bell Atlantic must obtain Section 271 approval for those states, before the FCC could consider approving the merger.

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<sup>35</sup> See *id.*; 47 U.S.C. § 271(i)(1).

<sup>36</sup> 47 U.S.C. § 153(1).

<sup>37</sup> In the *SNET-SBC Order*, the Commission noted that SBC had not yet obtained (and still has not obtained) Section 271 approval. Therefore, SNET was required to cease its origination of long distance traffic in SBC's seven state region. (*SNET-SBC Order* at ¶¶35-36). However, in stark contrast to GTE, SNET (whose market share in SBC territory was, in any event, negligible) *had already exited* those markets. (*Id.* at ¶ 22). In fact, SNET had taken several steps to ensure that it would not violate the 1996 Act by originating long distance traffic in SBC's region. Specifically, SNET stated that "all 1+ customers [in those states] have now moved to an alternative interexchange carrier of their choice." (*Id.* at ¶ 37). Also, at SNET's request, all relevant state commissions in SBC's region had cancelled SNET's certificates to provide service and related tariffs. And, SNET stated that it would no longer carry the calls originating in SBC's region through customers' use of calling cards or prepaid calling cards.

**V. THE MERGER WOULD HARM COMPETITION IN THE LONG DISTANCE MARKET AND THE INTERNET ACCESS MARKET**

As explained above, GTE's origination of long distance services in Bell Atlantic's region would cause the merged entity to be in violation of the 1996 Act. However, assuming that Bell Atlantic receives Section 271 authority, Bell Atlantic/GTE would have control over the origination and termination of significantly more interLATA calls than either entity controls at present. This increase in calls that originate and terminate in the combined Bell Atlantic/GTE region would increase its ability to engage in a cost-price squeeze, thereby harming competition in the long distance market.<sup>38</sup> The cost-price squeeze occurs when an ILEC inflates the costs incurred by unaffiliated long distance carriers through above-cost access charges, while imposing downward pressure on market prices for long distance services because above-cost access charges are nothing more than an internal transfer payment for the ILEC and its long distance affiliate.

The danger of cost-price squeeze here is significant because the merger of GTE and Bell Atlantic involves a much higher concentration of access lines owned by the combined entity. Bell Atlantic has more than forty million access lines in service across fourteen states.<sup>39</sup> GTE has more than twenty-two million access lines in service.<sup>40</sup> The combined entity would control more than sixty-two million access lines. As long as Applicants continue to exercise market power over exchange access and to price access charges significantly above cost, they have the ability to subject any long distance competitor to a cost-price squeeze. The danger of an anti-competitive cost-price squeeze increases with each successive major ILEC merger and will

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<sup>38</sup> See *BellSouth Corp. v. FCC*, 144 F.3d 58, 67 (D.C. Cir. 1998).

<sup>39</sup> *NY Merger Petition* at 4.

<sup>40</sup> *Id.* at 5.

not abate until access rates reflect underlying economic costs.

Approval of this merger would also endanger competition in the market for Internet services. In its review of the MCI-WorldCom merger, the Commission expressed its concern about the potential impact of mergers on the Internet, and therefore required MCI to divest its Internet business prior to the merger.<sup>41</sup> Here, there is a similar cause for concern. Currently, GTE is one of the leading Internet backbone providers.<sup>42</sup> After the merger, GTE plans to expand its capability through the construction of a national fiber network that will reach Bell Atlantic's customers.<sup>43</sup> The planned migration of Bell Atlantic's customer base onto GTE's Internet backbone will increase GTE's market power to a dangerous level. Furthermore, the merger will increase the merged entity's total percentage of Internet users and traffic, thereby harming competition in the Internet access market.

The merger will also increase the risk of coordinated anti-competitive action among the remaining ILECs. If the Commission approves the mergers of SBC/Ameritech and Bell Atlantic/GTE, these two giants would control access to *seventy percent* of all Internet users. By exercising bottleneck control over Internet access, SBC/Ameritech and Bell Atlantic/GTE could agree to exchange traffic on favorable terms and in such a way as to prevent meaningful competition from any other Internet service provider, not unlike the merger's potential impact on the local market. The Commission must draw the line now to avoid this result.

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<sup>41</sup> *MCI-WorldCom Order* at ¶¶ 142, 227.

<sup>42</sup> *Application, Public Interest Statement* at 16.

<sup>43</sup> *Id.*

**VI. THE COMMISSION SHOULD DENY THE MERGER DUE TO BELL ATLANTIC'S LACK OF COMPLIANCE WITH THE BA-NYNEX MERGER CONDITIONS**

As explained above, the Commission should deny Applicants' request for approval of the merger as anti-competitive and contrary to the public interest. Denial is also required because of Bell Atlantic's lack of compliance with the conditions imposed in the *BA-NYNEX Order*. The Commission should immediately deny the instant application and defer any consideration of the merger until after Bell Atlantic has filed a compliance plan with the Commission subject to notice and comment. Once the Commission has found that Bell Atlantic has fully complied with the conditions previously imposed, then Applicants could reapply for authority to complete their merger.

The Commission expected that the conditions imposed in the *BA-NYNEX Order* would be implemented "in good faith and in a reasonable manner to ensure that competing carriers are able to obtain the full benefits" of the conditions.<sup>44</sup> Bell Atlantic, however, has not to date fully complied with the conditions.<sup>45</sup> Several of these conditions relate to Bell Atlantic/NYNEX's operational support systems ("OSS").<sup>46</sup> In particular, Bell Atlantic/NYNEX was required to provide uniform interfaces for OSS functions throughout their combined region within fifteen months after the date of the merger order.<sup>47</sup> This deadline has come and gone

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<sup>44</sup> *BA-NYNEX Order* at 20069.

<sup>45</sup> See, e.g., Complaint of MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., Federal Communications Commission File No. E-98-12 (filed Dec. 19, 1997); Complaint MCI Telecommunications Corporation and MCImetro Access Transmission Services, Inc., Federal Communications Corporation File No. E-98-32 (filed March 17, 1998); Complaint of AT&T Corp. v. Bell Atlantic Corp., Federal Communications Commission File No. E-98-05 (filed Nov. 5, 1998).

<sup>46</sup> See *BA-NYNEX Order* at Appendix C.

<sup>47</sup> See *id.*, Condition 2.

without compliance. Nondiscriminatory access to OSS functions is vital to the development of meaningful competition, and Bell Atlantic's failure to meet this condition shows the futility of imposing conditions upon this type of merger rather than rejecting it outright.

## VII. CONCLUSION

For the foregoing reasons, the Commission should deny the Application of Bell Atlantic and GTE for authority to transfer control of licenses because Applicants have failed to show that the merger is in the public interest.

Respectfully submitted,

THE COMPETITIVE  
TELECOMMUNICATIONS  
ASSOCIATION

By: 

Genevieve Morelli  
Executive Vice President  
and General Counsel  
THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION  
1900 M Street, N.W., Suite 800  
Washington, D.C. 20036  
(202) 296-6650

Robert J. Aamoth  
Melissa M. Smith  
KELLEY DRYE & WARREN LLP  
1200 19<sup>th</sup> Street, N.W., Suite 500  
Washington, D.C. 20036  
(202) 955-9600

Its Attorneys

November 23, 1998

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 23rd day of November, 1998, a copy of **Opposition of the Competitive Telecommunications Association** was sent via first-class mail, postage prepaid, to the following:

Magalie R. Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Room 222  
Washington, DC 20554  
(Hand Delivery)

Regina M. Keeney, Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, NW  
Room 800  
Washington, DC 20554  
(Two copies, By Hand Delivery)

Ms. Jeanine Poltronieri  
Wireless Telecommunications Bureau  
2025 M Street, NW  
Room 5002  
Washington, DC 20054  
(By Hand Delivery)

International Transcription Services, Inc.  
1231 20<sup>th</sup> Street, NW  
Washington, DC 20036  
(By Hand Delivery)

Carol E. Matthey, Chief  
Policy and Program Planning Division  
Federal Communications Commission  
Common Carrier Bureau  
1919 M Street, NW, Room 544  
Washington, DC 20554  
(Two copies, By Hand Delivery)

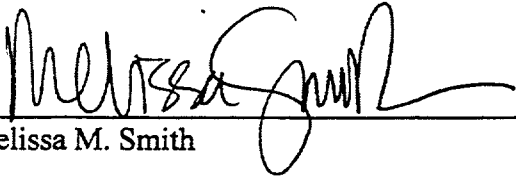
Steven E. Weingarten, Chief  
Commercial Wireless Division  
Federal Communications Commission  
2100 M Street, NW  
Room 7023  
Washington, DC 20554  
(By Hand Delivery)

Ms. Cecilia Stephens  
Policy and Program Planning Division  
Federal Communications Commission  
Common Carrier Bureau, Room 544  
1919 M Street, NW  
Washington, DC 20554  
(w/diskette, By Hand Delivery)

Kathryn A. Brown, Chief  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW  
Room 500  
Washington, DC 20554  
(By Hand Delivery)

William P. Barr  
Executive Vice President – Government  
and Regulatory Advocacy & General  
Counsel  
GTE CORPORATION  
One Stamford Forum  
Stamford, Connecticut 06904

James R. Young  
Executive Vice President -  
General Counsel  
BELL ATLANTIC CORPORATION  
1095 Avenue of the Americas  
New York, New York 10036



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Melissa M. Smith

# **ATTACHMENT B**

**DECLARATION OF PETRA FRANK-WITT**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Application of New York Telephone	)	
Company (d/b/a Bell-Atlantic-New York),	)	CC Docket No. 99-295
Bell Atlantic Communications, Inc.,	)	
NYNEX Long Distance Company, and	)	
Bell Atlantic Global Networks, Inc. for	)	
Authorization to Provide In-Region,	)	
Inter-LATA Services in New York	)	

**DECLARATION OF PETRA FRANK-WITT  
ON BEHALF OF THE COMPETITIVE  
TELECOMMUNICATIONS ASSOCIATION**

**I, Petra Frank-Witt, declare under penalty of perjury:**

1. I am a residential telephone service customer of Bell Atlantic-New York ("BA-NY"). I currently purchase both local telephone exchange service and digital subscriber line ("DSL") service from BA-NY. My service location is in the New York metropolitan area of New York state. I am submitting this affidavit on behalf of the Competitive Telecommunications Association ("CompTel"). I will describe the experience I had in trying to obtain both local exchange service and DSL service from different providers.

5. In August of this year, I began shopping for DSL service. While I could have chosen other DSL providers, BA-NY was about \$10 per month cheaper than other providers, and only BA-NY could actually install the service within a relatively quick (three weeks) time frame. The other providers were promising installation within a range of four to six weeks. Therefore, I chose BA-NY's "Infospeed<sup>SM</sup>" service.

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3. In order to receive the Infospeed<sup>SM</sup> service, I had to purchase a special computer modem from BA-NY. The advertised price for the "internal" modem that BA-NY was offering with this service was \$99.00. Installation cost \$99.00 as well.

4. In the first few months after I began receiving Infospeed<sup>SM</sup> service, I had a number of problems with both my equipment and the service. As a result, I was in frequent contact with BA-NY, and I was becoming increasingly frustrated with BA-NY's quality of service.

5. During this time period (between September and October of this year), I also received a telephone sales solicitation from a competitive local exchange carrier ("CLEC") called Z-Tel. Z-Tel offered me a voice package, which included local and long distance, as well as several interesting technological features which were not available from BA-NY. One of these features was the ability to view voice mail over the Internet.

6. After receiving this offer from Z-Tel, during one of my frequent phone conversations with BA-NY's customer service representatives, I asked if I could switch my voice service to BA-NY competitors. The customer service agent did not know the answer, but referred me to the BA-NY sales office.

5. I asked the BA-NY sales office representative whether I could switch my voice service to other providers, but retain my Infospeed<sup>SM</sup> service on the same line. The sales agent told me that if I switched my voice service to another provider, "the technicians would rip out the equipment [I have paid for]." In other words, if I wanted DSL service from BA-NY, I would also have to buy their voice service.

6. After receiving this response from BA-NY, I sent e-mails to Z-Tel's customer service department asking whether they could offer voice service over the same line that BA-NY provided me with DSL service. The Z-Tel representative also told me that Z-Tel does not offer DSL service and it was their understanding that BA-NY only offers DSL service as part of a package which includes voice and Internet service. Unless this restriction is a technical necessity, I cannot understand why, as a consumer, I am not given free choice among voice, DSL service, and Internet service providers ("ISPs"). The BA-NY Internet service coupled with the DSL service does not provide me with local access numbers in the State of New York in case I want to use a dial-up connection.

7. Shortly after this incident, I was doing some unrelated research on the World Wide Web ("the Web"), where I saw the name "Carol Ann Bischoff" as someone who was quoted in a story relating to competition in local telecommunications markets. I contacted Ms. Bischoff about my problem, and she responded with follow-up calls from her staff.

8. CompTel's staff explained to me that the Bell Atlantic DSL tariff on file with the Federal Communications Commission ("FCC") does not say that I have to purchase local telephone service from BA-NY in order to receive DSL service.

9. I have also sent e-mails, describing my service problems and that I had contacted CompTel, to senior managers within BA-NY. Since these contacts with BA-NY managers, BA-NY has been most responsive to my concerns. They made every effort to resolve my problems and improve my service, and I am grateful for their concerned attention. Although I have not found a competitor who offers all the

services I need (*e.g.*, "distinctive ring"), I am troubled that I cannot, as a practical matter, purchase voice service from the provider of my choice and retain BA-NY's DSL service on the same line. Furthermore, I would like to be able to purchase DSL service coupled with an ISP of my choice; one that offers local access numbers in New York, which BA-NY does not.

10. Given that the FCC is considering BA-NY's efforts to facilitate local exchange competition as part of its evaluation of BA-NY's application to provide long distance service, I believe that my experience is relevant to the FCC's determination.

Pursuant to 47 C.F.R. §1.16, I declare under penalty of perjury that the foregoing is true and correct. Executed on: December 9, 1999.

  
Petra Frank-Witt

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of March, 2000 I served copies of the foregoing Comments of the Competitive Telecommunications Association ("CompTel") for CompTel either by hand delivery or by first-class mail postage prepaid, on the following:

Magalie Roman Salas, Secretary\*  
Federal Communications Commission  
445 Twelfth Street, SW, TW B204  
Washington, DC 20554  
(4 copies)

Lawrence E. Strickling, Chief\*  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 5C450  
Washington, DC 20554

Michelle Carey, Chief\*  
Policy & Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 5C 207  
Washington, DC 20554

Bill Dever\*  
Policy & Program Planning Bureau  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 5C 207  
Washington, DC 20554

Jake E. Jennings, Deputy Chief \*  
Policy & Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 5C 207  
Washington, DC 20554

Donald Abelson, Chief\*  
International Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 6C 723  
Washington, DC 20554

Steve E. Weingarten, Chief\*  
Commercial Wireless Division  
Federal Communications Commission  
445 Twelfth Street, SW, 4C 224  
Washington, DC 20554

Lauren Kravetz\*  
Wireless Telecommunications Bureau  
445 Twelfth Street, SW  
Room 4-A163  
Washington, DC 20554

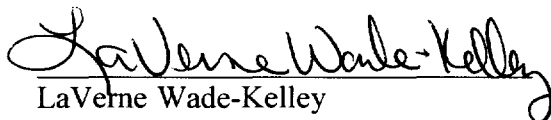
William P. Barr  
GTE Corporation  
1850 M Street, NW, Suite 1200  
Washington, DC 20036

Steven G. Bradbury  
John P. Frantz  
Kirkland & Ellis  
655 Fifteenth Street, NW  
Washington, DC 20005

Mark J. Mathis  
John Thorne  
Michael E. Glover  
Leslie A. Vial  
Lawrence W. Katz  
Bell Atlantic Corporation  
1095 Avenue of the Americas  
New York, New York 10036

Janice Myles\*  
Policy & Program Planning Division  
Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW, 5C 327  
Washington, DC 20554

Richard E. Wiley  
R. Michael Senkowski  
Suzanne Yelen  
Wiley, Rein & Fielding  
1776 K Street, NW  
Washington, DC 20006

  
LaVerne Wade-Kelley

---

\*By hand delivery